DEPARTMENT OF STATE REVENUE

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01-20140632.LOF

Letter of Findings: 01-20140551 & 01-20140632
Indiana Individual Income Tax
For The Tax Year 2011

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Husband and wife were required to file 2011 Indiana individual income tax return because they were Indiana residents. Husband and wife were not responsible for the negligence penalty because they established reasonable cause for penalty abatement.

ISSUES

I. Indiana Individual Income Tax - Residency: Domicile.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; 45 IAC 3.1-1-21; 45 IAC 3.1-1-22; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayers protest the Department's proposed assessment for the 2011 tax year.

II. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayers protest the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayers ("Husband" and/or "Wife") are shareholders of an Indiana S Corporation. In addition to the K-1 income from the Indiana S Corporation, Taxpayers also receive income other than K-1, which includes wages (W-2), investment (1099-DIV, 1099-INT, 1099-MISC) and retirement (SSA-1099) income. Additionally, Taxpayers owned various residences in Indiana and in Florida. Taxpayers have been filing married-jointly Indiana returns (IT-40 forms) reporting their individual income tax since 1997. Taxpayers however ceased filing their Indiana return for the tax year 2011. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the tax year 2011, that Taxpayers failed to file their 2011 Indiana income tax return, and that Indiana income tax was due.

After receiving the proposed assessment, Taxpayers filed a 2011 Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return (IT-40 PNR form) in 2014. Taxpayers also protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayers' protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency: Domicile.

DISCUSSION

The Department assessed Taxpayers income tax for the 2011 tax year on the ground that Taxpayers were Indiana residents, that they failed to file their 2011 Indiana income tax return, and that the Indiana income tax was

due.

Taxpayers contended that they were not required to file their 2011 Indiana income tax return because they were not Indiana residents. Nonetheless, in September 2014, Taxpayers filed the IT-40 PNR form for the tax year 2011, asserting that they are shareholders of an Indiana S Corporation and received K-1 income from the Indiana S Corporation. Taxpayers further stated that they did not owe any Indiana income tax because the tax withheld on the K-1 income was determined to be more than tax due, and that they were due for a refund of $67 as a result.

The issue is whether, for the tax year 2011, Taxpayers were Indiana residents and therefore were subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . . ." IC § 6-3-1-12; see also 45 IAC 3.1-1-21. Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, 45 IAC 3.1-1-22 states:

> For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur**.
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> **In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**
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> The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:
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> (1) Purchasing or renting residential property
> (2) Registering to vote
> (3) Seeking elective office
> (4) Filing a resident state income tax return or complying with the homestead laws of a state
> (5) Receiving public assistance
> (6) Titling and registering a motor vehicle
> (7) Preparing a new last will and testament which includes the state of domicile.
>
> (**Emphasis added**).

In Croop v. Walton, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart,

Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. Id. at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. Id. The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

> The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." "**If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one**."
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> No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning**.
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> Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" . . . "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."
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> "Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case . . . .
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> Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely**.
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> Id. at 277-78. (Internal citations omitted) (**Emphasis added**).

In State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

> Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**
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> **A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.**
>
> Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1317-18 (Ind. 1988). (Internal citations omitted) (**Emphasis added**).

During the protest process, Taxpayers submitted additional documentation to support their assertions that they were not Indiana residents and did not owe any Indiana income tax for the tax year 2011. The documents included affidavits, voter registrations, driver's licenses, automobile registration, receipts of church donation, and sample copies of bank statements. Taxpayers also provided the property tax information on their Indiana and Florida residences. Specifically, Taxpayers claimed that (1) they own residential property in Florida; (2) they occupied their Florida residence over six months during the year; (3) they paid Florida property tax on the residence although they did not claim the homestead exemption on this property; (4) they stopped claiming the Indiana homestead deduction for tax assessment date March 1, 2011 (Tax Year 2011 pay 2012); (5) they maintained a US Post Office Box and address in Florida; (6) Husband obtained his Florida Driver's License and registered to vote on February 28, 2011 and Wife also did so on March 28, 2011; (7) they titled and registered a motor vehicle in Florida; (8) they filed their federal income tax return for 2011 year using Florida address; (9) they donated to a church in Florida; and (10) they maintained accounts at a Florida bank. Taxpayers further asserted beginning in 2014 they claimed the homestead deduction on their Florida residence.

Upon review, however, Taxpayers are mistaken. First, Taxpayers have been longtime Indiana residents who maintained a primary residence and established domicile in Indiana. The public available information showed that, for the tax year 2011, Taxpayers maintained multiple residences in Indiana and in Florida–at least two residences in Indiana ("Residence N" and "Residence L"). Taxpayers claimed Residence N as their primary residence until March 1, 2011. The public available information noted that Taxpayers removed the homestead exemption on Residence N, stating that they moved to Residence L. Taxpayers did not apply for the homestead exemption on their residence in Florida for the tax year 2011; not until 2014 Taxpayers did so. While the public available information showed that Taxpayers sold their Residence N in September 2013, Residence L remained their Indiana residence.

Second, Taxpayers' documents showed that, in spring 2011, they registered to vote, obtained driver's licenses, and titled one vehicle in Florida. But, Taxpayers' documentation failed to establish that they abandoned their domicile in Indiana and never intended to return to Indiana. Specifically, in May 2011, Husband renewed the license of his BMW with the Indiana Bureau of Motor Vehicles ("BMV"). In June 2012, Taxpayers purchased and titled a 2012 Lexus RX with the BMV and renewed in 2013 and 2014. Taxpayers continued using their Residence L, paying property tax and bills, as well as titling/registering their motor vehicles in Indiana. Taxpayers asserted that they stayed in Florida for more than six (6) months during 2011, but their documentation failed to substantiate their assertion. Even if, assuming that Taxpayers stayed in Florida for more than six (6) months, Taxpayers returned to Indiana eventually. In short, Taxpayers failed to establish they properly changed their domicile and became Florida residents in 2011.

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Bayh, 521 N.E.2d at 1317-18. Taxpayers failed to do so.

FINDING

Taxpayers' protest is respectfully denied.

II. Tax Administration - Negligence Penalty.

DISCUSSION

Taxpayers requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if the taxpayer:

(1) fails to file a return for any of the listed taxes;
(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
(3) incurs, upon examination by the department, a deficiency that is due to negligence;
(4) fails to timely remit any tax held in trust for the state; or
(5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier,

> or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

45 IAC 15-11-2(b) further states:

> "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). The taxpayer "must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section." Id. The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case."

In this instance, upon review, Taxpayers demonstrated that the steps they took since late 2010 lead them to reasonably believe they have relocated to Florida. Also, a further review of the Department's records showed that the proposed assessment at issue was Taxpayers' first assessment and that Taxpayers overall maintained a good history of compliance. Given the totality of the circumstances, the Department is prepared to agree that Taxpayers affirmatively demonstrated that their failure to file and to pay tax for the tax year 2011 was due to reasonable cause and not due to negligence. Taxpayers however are on notice that should similar circumstances arise the negligence penalty may not be abated.

FINDING

Taxpayers' protest of the negligence penalty is sustained.

SUMMARY

For the reasons discussed above, Taxpayers' protest of the Department's proposed assessment for the 2011 tax year is denied. Taxpayers' protest of the negligence penalty is sustained.

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